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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/943,187	08/29/2001	Kristy A. Campbell	MI22-1742	8497

21567 7590 03/11/2003

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EXAMINER

DUONG, KHANH B

ART UNIT PAPER NUMBER

2822

DATE MAILED: 03/11/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/943,187

Applicant(s)

CAMPBELL ET AL.

Examiner

Khanh Duong

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 26 November 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-50 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-33 is/are allowed.
- 6) ☒ Claim(s) 34-41 and 47 is/are rejected.
- 7) ☐ Claim(s) 42-50 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 12.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after allowance or after an Office action under *Ex Parte Quayle*, 25 USPQ 74, 453 O.G. 213 (Comm'r Pat. 1935). Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on November 26, 2002 has been entered.

### ***Response to Amendment***

This Office Action is in response to the amendment, Paper No. 11, filed on November 26, 2002. Accordingly, new claims 34-50 were added. Currently, claims 1-50 are pending in the application.

### ***Claim Objections***

Claims 34, 39 and 42 are objected to because of the following informalities:

Claims 34 and 42, line 1, "The method" should be --A method--.

Claim 39, line 2, "per 1 liter of a from" is unclear.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

**Claims 39 and 47 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

Claims 39 and 47 recite the limitation "said roughness reducing" in line 3. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 34-37 and 39-41 are rejected under 35 U.S.C. 102(b) as being anticipated by Hugget et al. (US 4,368,099).**

Re claims 34-37, 40 and 41, Huggett et al. discloses a method of forming a chalcogenide structure (see col. 2, lines 17-36), comprising: forming a metal containing layer (Ag) over a chalcogenide glass layer (GeSe); irradiating the metal-containing layer to break a chalcogenide bond of the chalcogenide glass layer at the interface of the metal-containing layer and chalcogenide glass layer, such that at least a portion of the metal-containing layer diffuses into the chalcogenide glass layer; and, after the step of irradiating, exposing an outer surface of the chalcogenide glass layer to an iodine comprising fluid (potassium iodide/iodine solution).

Re claim 39, since Huggett et al. discloses the same process conditions as the instant invention, it should be inherent that the irradiating step is effective to form Ag<sub>2</sub>Se as at least part of the outer surface of the chalcogenide glass layer and that the etching step is effective to etch

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away at least some of the Ag<sub>2</sub>Se and thereby at least partially contributing to the roughness reducing step.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

**Claim 38 is rejected under 35 U.S.C. 103(a) as being unpatentable over Huggett et al.**

Re claim 38, Huggett et al. fails to show specific concentration of potassium iodide solution.

However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the process of Huggett et al. by selecting a specific concentration of potassium iodide solution within the range as required by the claim, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or working ranges involves only routine skill in the art. *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955).

***Allowable Subject Matter***

Claims 42-50 would be allowable if rewritten or amended to overcome the objection set forth in this Office action.

Claim 47 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Claims 1-33 and are allowed.

The following is an examiner's statement of reasons for allowance: the prior art of record does not show or suggest, in addition to other elements or processes as shown, a method of forming a chalcogenide comprising device, comprising: *irradiating the silver effective to break a chalcogenide bond of the chalcogenide material at an interface of the silver comprising layer and chalcogenide material and diffuse at least some of the silver into the chalcogenide material,*

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*and forming an outer surface of the chalcogenide material; after the irradiating, exposing the chalcogenide material outer surface to an iodine comprising fluid effective to reduce roughness of the chalcogenide material outer surface from what it was prior to the exposing; and after exposing, depositing a second electrode material over the chalcogenide material, and forming the second conductive electrode material into an electrode of the device.*


Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khanh Duong whose telephone number is (703) 305-1784. The examiner can normally be reached on Monday - Friday (9:00 AM - 6:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Amir Zarabian, can be reached on (703) 308-4905. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3431 for regular communications and (703) 308-7722 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

  
KBD  
March 10, 2003

  
AMIR ZARABIAN  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2800